

THE HON'BLE MR JUSTICE J.CHELAMESWAR
And
THE HON'BLE MR JUSTICE P. LAKSHMANA REDDY

WRIT APPEAL No : 1523 of 2005

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DATED: 28.12.2005

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BETWEEN:

Andhra Bank Farmers' Service Coop., Society Ltd.,

Rep., by its Managing Director,

Dhulipalla, Sattenapalli Mandal,

Guntur Distirct.

... Appellant

AND

Challa Rathaiah

... Respondent

THE HON'BLE MR JUSTICE J.CHELAMESWAR
And
THE HON'BLE MR JUSTICE P. LAKSHMANA REDDY

WRIT APPEAL No.1523 of 2005

ORDER:- (PER THE HONOURABLE JC,J)

The respondent in WP.No.4523 of 2000 is the appellant herein. The sole respondent herein is the petitioner in the abovementioned writ petition. The respondent is an employee of the appellant, working as Accountant. A criminal case was registered against the respondent under various sections including Section 302 IPC. The further details may not be necessary for the present case. Pursuant to the registration of the criminal case, the appellant herein kept the respondent under suspension on 14.06.1993. The criminal case ended in acquittal by a judgment, dated 02.03.1998, of the competent criminal Court. Consequent upon the acquittal, the respondent was reinstated into service on 31.03.1998. On reinstatement, the respondent claimed wages and all benefits attached to his employment for the period, which he was under suspension. The appellant herein by an order, dated 12.11.1998, rejected the claim of the respondent. Challenging the said decision, the respondent approached this Court by way of the abovementioned writ petition, which was allowed by the order under appeal. Hence, the present writ appeal.

It is stated by the learned counsel for the appellant that the relevant rules of the appellant's organization create a legal fiction that an employee who suffers custody under a criminal charge for a period exceeding (48) forty eight hours, is deemed to be under suspension. Therefore, the employer had no option, but to continue the respondent under suspension during the pendency of the trial of the criminal case. The learned counsel, therefore argued that as the employee did not render any service during the period of suspension, the appellant is relieved of his obligation to make any payment for the said period as the employee did not render any service to the appellant.

Admittedly, the respondent was arrested on 06.05.1993 by the police and he was under custody till 19.05.1993, on which date, it appears, he was enlarged on bail by the competent Court. For the said period, undoubtedly, by virtue of the operation of law even if the employer-appellant wished to continue the respondent in service, it could not have continued him because, by the process approved by the law, the respondent was prevented from discharging his contractual obligations of the employment with the employer-appellant. But, from 19.05.1993 when the respondent was enlarged on bail, it was the option of the employer whether to continue the employee-respondent under suspension or not. In other words, there was no legal

compulsion obligating the appellant-employer to continue the employee under suspension say a self-imposed rule by which the appellant-employer thought it fit or wise to keep the employee under suspension though physically the employee was available and willing to serve the appellant.

The learned counsel for the appellant, however, relied on a judgment of Supreme Court reported in **BALDEV SINGH v. UNION OF INDIA & OTHERS**. It was a case where the appellant before the Supreme Court was arrested on 30.03.1987 on a charge under Section 302 IPC, among other charges. He was convicted by the Trial Court, but, on an appeal the conviction was reversed. Eventually, he was released from jail on 04.04.1992. The Supreme Court, as a matter of fact, recorded that from the date of the arrest i.e., on 30.03.1987 till the reversal of the conviction in the appeal, the appellant was in custody, either pre-trial or imprisonment pursuant to the conviction.

In the abovementioned factual background, when the appellant sought to recover the salary and other monetary benefits for the period he spent in the custody from his employer, the Supreme Court declared that the appellant was not entitled for the relief sought for on the ground that he did not render service for the said period.

We understood from the above decision that the principle underlying such a conclusion is that even if the employer wishes to continue the employee, neither the employer nor the employee could have continued the relationship by virtue of the operation of law as employee was kept in custody.

We, therefore, are of the opinion that the decision has no application to the facts of the present case insofar as it pertains to the period in dispute except for the limited period commencing from 06.05.1993 ending with 19.05.1993 during which period the respondent herein was in custody and prevented from rendering service for reasons beyond the control of either employee or the employer.

Under the circumstances, we do not see any merits in the appeal and the same is

dismissed at the admission stage, except to the limited extent indicated above.

After the order is dictated, the learned counsel for the appellant requested that he may be permitted to make payment as demanded by the respondent, within a period of eight weeks from today. Prayer granted.

J.CHELAMESWAR, J

P. LAKSHMANA REDDY, J

Date: 28.12.2005

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